

Amendments to Senate Bill No. 206  
1st Reading Copy

For the Senate Natural Resources Committee

Prepared by Sonja Nowakowski  
February 11, 2011 (12:44pm)

1. Title, page 1, line 5.

**Strike:** "DESIGNATE"**Insert:** "EXAMINE"

2. Title, page 1, line 6 through line 7.

**Strike:** "ISSUING" on line 6 through "FACILITIES" on line 7**Insert:** "CONDUCTING A REVIEW IN ACCORDANCE WITH THE MONTANA  
ENVIRONMENTAL POLICY ACT IN CONJUNCTION WITH AN APPLICATION  
FOR A CERTIFICATE UNDER THE MAJOR FACILITY SITING ACT;"

3. Title, page 1, line 8.

**Following:** "2;"**Insert:** "REQUIRING FACILITIES TO BE SITED IN FEDERALLY  
DESIGNATED ENERGY CORRIDORS WHEN COMPATIBLE WITH OTHER  
SITING AND RELIABILITY REQUIREMENTS;"

4. Title, page 1, line 8.

**Strike:** "SECTION"**Insert:** "SECTIONS 75-20-104, 75-20-301, AND"

5. Page 1.

**Following:** line 12**"Section 1.** Section 75-20-104, MCA, is amended to read:**"75-20-104. Definitions.** In this chapter, unless the  
context requires otherwise, the following definitions apply:(1) "Addition thereto" means the installation of new  
machinery and equipment that would significantly change the  
conditions under which the facility is operated.(2) "Application" means an application for a certificate  
submitted in accordance with this chapter and the rules adopted  
under this chapter.(3) (a) "Associated facilities" includes but is not limited  
to transportation links of any kind, aqueducts, diversion dams,  
pipelines, storage ponds, reservoirs, and any other device or  
equipment associated with the delivery of the energy form or  
product produced by a facility.(b) The term does not include a transmission substation, a  
switchyard, voltage support, or other control equipment or a  
facility or a natural gas or crude oil gathering line 25 inches  
or less in inside diameter.(4) "Board" means the board of environmental review  
provided for in 2-15-3502.

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility or biomass generation facility, as defined in 15-6-157, to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iv) does not include an upgrade to an existing transmission line to increase that line's capacity to less than or equal to 230 kilovolts, including construction outside the existing easement or right-of-way. Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas.

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Sensitive areas" means government-designated areas that have been recognized for their importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers,

or national parks, monuments, or historic sites.

(11) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(12) "Transmission reliability agencies" means the federal energy regulatory commission, the western electricity coordinating council, the national electric reliability council, and the Midwest reliability organization.

~~(12)~~ (13) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

- (a) installing larger conductors;
- (b) replacing insulators;
- (c) replacing pole or tower structures; or
- (d) changing structure spacing, design, or guying.

~~(13)~~ (14) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

{ Internal References to 75-20-104:

15-24-3001x	69-2-216x	69-3-1204x	75-20-201x
75-20-207x	75-20-208x	75-20-208x	75-20-208x
75-20-211x	75-20-211x	75-20-211x	75-20-301x
75-20-301x	75-20-301x	75-20-303x	75-20-303x
75-20-303x	75-20-303x	75-20-304x	75-20-304x
75-20-1202x			

**Insert: "Section 2. Section 75-20-301, MCA, is amended to read:**

**"75-20-301. Decision of department -- findings necessary for certification.** (1) Within 30 days after issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(8)(a) and (8)(b), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

- (a) the basis of the need for the facility;
- (b) the nature of the probable environmental impact;
- (c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- (d) in the case of an electric, gas, or liquid transmission line or aqueduct:

- (i) what part, if any, of the line or aqueduct will be located underground;

- (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

- (iii) that the facility will serve the interests of utility system economy and reliability;

- (e) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that

the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;

(f) that the facility will serve the public interest, convenience, and necessity;

(g) that the department or board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(h) that the use of public lands or federally designated energy corridors for location of the a facility defined in 75-20-104(8)(a) or (8)(b) was evaluated and public lands or federally designated energy corridors for that facility were selected whenever their use is as economically practicable as the use of private lands was compatible with:

(i) the requirements of subsection (1)(a) through (1)(g);  
and

(ii) transmission line reliability criteria established by transmission reliability agencies for a facility defined in 75-20-104(8)(a).

(2) In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(f), the department shall consider:

(a) the items listed in subsections (1)(a) and (1)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; and

(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, will not result in:

(i) a violation of a law or standard that protects the environment; or

(ii) a violation of a law or standard that protects the public health and safety.

(4) For facilities defined in 75-20-104, if the department cannot make the findings required in this section, it shall deny

the certificate."

{ Internal References to 75-20-301:  
75-20-216x 75-20-216x 75-20-304x }

**Renumber:** subsequent sections

6. Page 2, line 15.

**Following:** the first "the"

**Strike:** "certificate issued"

**Insert:** "environmental review conducted pursuant to Title 75,  
chapter 1, parts 1 through 3, prepared"

7. Page 2.

**Following:** line 16

**Insert:** "(b) The department shall site a corridor of at least 500  
feet in width for the facility within the 1-mile-wide  
corridor in accordance with 75-20-301."

**Renumber:** subsequent subsections

8. Page 2, line 17.

**Strike:** "A"

**Insert:** "If the certificate holder complies with subsection (6),  
a"

**Strike:** "site"

**Insert:** "modify the siting of"

**Strike:** "facility siting"

9. Page 2, line 17 through line 18.

**Strike:** "pursuant" on line 17 through "(5) (a)" on line 18

10. Page 2, line 18.

**Strike:** "and"

**Insert:** "if the alternate siting is done"

11. Page 2, line 20 through line 21.

**Strike:** subsection (c) in its entirety

**Insert:** "(6) (a) A certificate holder may submit an adjustment of  
the location of a facility outside the corridor designated  
pursuant to subsection (5) to the department. The adjustment  
must be accompanied by the written agreement of the affected  
property owner and all contiguous property owners that would  
be affected. The submission must include a map showing the  
approved facility location and the proposed adjustment.

(b) The certificate holder may construct the facility as  
described in the submission unless the department notifies the  
certificate holder within 15 days of the submission that the  
department has determined that:

(i) the adjustment would change the basis of any finding  
required under 75-20-301 to the extent that the department would  
have selected a different location for the facility; or

(ii) the adjustment would materially increase unmitigated

adverse impacts.

(c) Siting of a facility within the corridor designated pursuant to subsection (5) or an adjustment pursuant to subsection (6) (a) is not subject to:

- (i) Title 75, chapter 1, part 2;
- (ii) a certificate amendment under 75-20-219; or
- (iii) a board review under 75-20-223."

- END -